

Gary Schnitzer, Esq.
Nevada Bar No. 395
Kravitz, Schnitzer, Sloane & Johnson, Chtd.
8985 Eastern Avenue, Suite 200
Las Vegas, Nevada 89123
Direct: 702 222-4142
Office: 702 362-6666
Fax: 702 362-2203
Email: gschnitzer@kssattorneys.com

R. Bruce Allensworth*
Brian M. Forbes, *pro hac vice*
Gregory N. Blase, *pro hac vice*
K&L GATES LLP
State Street Financial Center
One Lincoln Street
Boston, MA 02111
Tel. (617) 261-3100
Fax (617) 261-3175
Email: bruce.allensworth@klgates.com
brian.m.forbes@klgates.com
gregory.blase@klgates.com

Attorneys for Litton Loan Servicing LP

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

GRANT MATTHEW YOUNGREN,

Plaintiffs,

vs.

OWNIT MORTGAGE SOLUTIONS, INC.;
FIRST MAGNUS FINANCIAL
CORPORATION/CHARTER FUNDING;
LITTON LOAN SERVICING LP; AMY
BLAZER; MERSCORP, INC.;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEM, INC.; DOES
1-25 CORPORATIONS; and DOES and
ROES 1-25 INDIVIDUALS

Defendants.

Case No. 3:09-cv-00595-ECR-RAM

**LITTON LOAN SERVICING LP'S
RESPONSE TO PLAINTIFF'S
MOTION TO STAY AND "DEMAND
FOR DISCLOSURE"
INDISPENSABLE PARTY**

Defendant Litton Loan Servicing LP ("Litton"), through its counsel, respectfully submits
the following response to the Motion by plaintiff Grant Matthew Youngren ("Youngren") to Stay

* Of counsel, *pro hac vice* motion to be filed shortly.

1 Pending Resolution of Plaintiff's Motion to Remand and "Demand for Disclosure" of
2 Indispensable Party (Docket No. 10), dated October 13, 2009 ("Motion"). In his Motion,
3 Youngren asks the Court to: (1) stay proceedings in this matter pending the Court's determination
4 of Youngren's Motion to Remand; and (2) order defendants to "disclose 'indispensable parties'"
5 As to Youngren's request for a stay pending resolution of his Motion to Remand, Litton takes no
6 position as to the propriety of that request. As to Youngren's request that the Court order Litton
7 to "disclose indispensable parties," Litton objects to any such request because, even assuming
8 Litton had knowledge of the existence of so-called "indispensable parties," there is no basis in
9 law to require Litton to disclose that information at this stage of the litigation and plaintiff's
10 request is procedurally defective.

11 **The Court Should Deny Youngren's "Demand for Disclosure"**

12 On August 24, 2009, Youngren filed a Complaint against Litton and others in Nevada
13 State Court. The Complaint purports to set forth twelve separate causes of action, including
14 claims for fraud, racketeering under Nevada law, and various alleged conspiracies to commit
15 fraud. On October 5, 2009, MERSCORP, Inc., and Mortgage Electronic Registration Systems,
16 Inc. ("MERS") removed this action to this Court. On October 13, 2009, Youngren filed the
17 instant Motion, in which, among other things, Youngren "demands" that Litton disclose its
18 interest, if any, in "the Note, Deed of Trust, and the transactions complained and" further, to
19 disclose its "knowledge of unrecorded assignments, transfers, or pledges." Motion at 6.
20 Youngren apparently seeks this information to avoid involuntary dismissal under Rule 41 for
21 failure to join all necessary parties, Motion at 9, and because Youngren is "unclear as to what
22 interest [Litton] has in the action." Motion at 3, n. 2. In other words, now that he admits he has
23 no idea whether his claims against Litton have any factual support, Youngren seeks the disclosure
24 of certain information before the parties have even had an opportunity to respond to the
25 Complaint.

26 In short, the Federal Rules of Civil Procedure do not provide for this peculiar form of
27 relief. Rather, under Rule 8(a), the Complaint must "contain a short and plain statement of the
28

1 claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). In *Bell Atlantic Corp. v.*
2 *Twombly*, 550 U.S. 544, 555 (2007), the United States Supreme Court held that the mandate to
3 allege the grounds upon which the claim for relief rests “requires more than labels and
4 conclusions,” and that “a formulaic recitation of the elements of a cause of action will not do.”
5 The United States Supreme Court reiterated this standard just two months ago in, *Ashcroft v.*
6 *Iqbal*, 129 S. Ct. 1937, 1953 (May 18, 2009). In that case, the Court stated that Rule 8(a)
7 “demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 129
8 S. Ct. at 1949 (2009). Moreover, because fraud must be pled with particularity under Rule 9(b),
9 plaintiff cannot file a Complaint with no support in the hopes that discovery will later disclose a
10 basis for his claims. See, e.g., *McFarland v. Memorex Corp.*, 493 F. Supp. 631, 639 (C.D. Cal.
11 1980) (stating that “if plaintiff cannot allege even the barest details, he cannot rely on discovery
12 to make his case”); *Abrahamson v. Western Sav. and Loan Ass’n*, Civ. No. 88-1677 PHX WPC,
13 1989 WL 259997 at *6 (D. Ariz. Feb. 15, 1989) (stating that “[t]he philosophy to ‘sue first, ask
14 questions later’ is discouraged by the particularity requirements of Rule 9(b)”). The burden at
15 this stage in the pleadings rests squarely on plaintiff to submit a Complaint that complies with
16 Rules 8, 9(b), and 12 of the Federal Rules of Civil Procedure. Having failed to do so, Youngren
17 is not entitled to seek discovery before the pleadings are closed to bolster his admittedly deficient
18 pleadings. See *id.* Specifically, he has provided no support for this contention, and Litton is
19 aware of none.

20 In light of the above, the better course would be to deny Youngren’s “demand for
21 disclosure” and defer discovery in this matter until such time after the pleadings have closed.
22
23
24
25
26
27
28

Respectfully submitted,

/s/ Brian M. Forbes

Gary Schnitzer, Esq.
Nevada Bar No. 395
Kravitz, Schnitzer, Sloane & Johnson, Chtd.
8985 Eastern Avenue, Suite 200
Las Vegas, Nevada 89123
Direct: 702 222-4142
Office: 702 362-6666
Fax: 702 362-2203
Email: gschnitzer@kssattorneys.com

R. Bruce Allensworth*
Brian M. Forbes, *pro hac vice*
Gregory N. Blase, *pro hac vice*
K&L GATES LLP
State Street Financial Center
One Lincoln Street
Boston, MA 02111
Tel. (617) 261-3100
Fax (617) 261-3175
Email: bruce.allensworth@klgates.com
brian.m.forbes@klgates.com
gregory.blase@klgates.com
Attorneys for Litton Loan Servicing LP

Dated: October 26, 2009

* Of counsel, *pro hac vice* motion to be filed shortly.

CERTIFICATE OF SERVICE

Pursuant to Local Rule 5-1, I hereby certify that on October 26, 2009, I electronically transmitted the above **Litton Loan Servicing LP's Response To Plaintiff's Motion To Stay And "Demand For Disclosure" Indispensable Party** to the Office of the Clerk of the United States District Court for the District of Nevada using the Court's CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel of record in this matter; all counsel being registered to receive Electronic Filing.

/s/ Brian M. Forbes

Brian M. Forbes